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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91200488
Party	Plaintiff Color Image Apparel, Inc.
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Submission	Answer to Counterclaim
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Attachments	Bella_Bird_Answer_to_Counterclaims.pdf (5 pages)(133804 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No.: 85/166,228
For the Trademark: BELLA BIRD
Published in the Official Gazette on June 28, 2011

Color Image Apparel, Inc., a California
corporation,

Opposer,

v.

DownEast Outfitters, Inc., a Utah
corporation,

Applicant.

Opposition No. 91200488

**OPPOSER/REGISTRANT'S ANSWER TO COUNTERCLAIMS TO PARTIALLY
CANCEL**

NOW COMES oppose and registrant Color Image Apparel, Inc. ("CIA") by and through its undersigned counsel, and hereby answers the Counterclaims to Partially Cancel Registration Nos. 2,895,709 and 3,519,794, filed by applicant DownEast Outfitters, Inc.'s ("Applicant"), as follows:

COUNTERCLAIM NO. 1
**(Partial Cancellation of Opposer's Registration
No. 2,895,709 for the mark BELLA)**

1. CIA states that the Notice of Opposition speaks for itself and on that basis, denies each and every allegation contained in Paragraph 1.
2. CIA denies each and every allegation contained in Paragraph 2.
3. CIA denies each and every allegation contained in Paragraph 3.

4. CIA states that the listed application speaks for itself and on that basis, denies each and every allegation contained in Paragraph 4.

5. CIA denies each and every allegation contained in Paragraph 5.

6. CIA denies each and every allegation contained in Paragraph 6.

COUNTERCLAIM NO. 2
(Partial Cancellation of Opposer's Registration
No. 3,519,794 for the mark BELLA)

7. CIA states that the Notice of Opposition speaks for itself and on that basis, denies each and every allegation contained in Paragraph 7.

8. The allegations contained in Paragraph 8 are primarily argumentative and/or contain legal rather than factual matter, and thus, CIA is not required to admit or deny.

9. CIA denies each and every allegation contained in Paragraph 9.

10. CIA denies each and every allegation contained in Paragraph 10.

11. CIA denies each and every allegation contained in Paragraph 11.

12. CIA denies each and every allegation contained in Paragraph 12.

13. CIA denies each and every allegation contained in Paragraph 13.

AFFIRMATIVE DEFENSES

For further response to the Counterclaims, and as separate affirmative defenses, CIA alleges as follows:

First Affirmative Defense

The Counterclaims fail to state claims upon which relief can or should be granted.

Second Affirmative Defense

The Counterclaims are barred by the applicable statute of limitations.

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Third Affirmative Defense

The Counterclaims are barred by the doctrine of laches, estoppel, acquiescence and/or waiver.

Fourth Affirmative Defense

Applicant has not suffered any ascertainable harm in relation to any of its Counterclaims.

Fifth Affirmative Defense

CIA has always used the BELLA marks on all of the goods identified in the associated applications and has never abandoned or discontinued use of the BELLA marks with intent not to resume.

Sixth Affirmative Defense

The allegations of the Counterclaims were not made in good faith, and those allegations made “on information and belief” did not have the requisite degree of investigation necessary and required to form a good faith allegation “on information and belief.”

Seventh Affirmative Defense

Information on the use of the mark BELLA, Registration No. 2,895,709 is readily available on the BELLA website at www.bella.com, which is and should have been immediately known to Applicant, especially in view of the allegation by Applicant that BELLA is not being used in connection with only 4 out of the 18 apparel items listed in the application, namely “dresses, skirts, shorts and pants.” This allegation implicitly suggests that Applicant is aware that CIA is using BELLA in connection with the remaining 14 apparel items listed in the application. Because at least 2 of the 4 apparel items identified by Applicant are shown on the www.bella.com website (shorts and pants), this allegation further demonstrates the bad faith pleading and allegations of these counterclaims.

Eighth Affirmative Defense

CIA reserves its right to raise additional affirmative defenses up to the time including after trial.

WHEREFORE, CIA respectfully requests that the Counterclaims for Partial Cancellation be denied, that the Counterclaims be dismissed with prejudice, that Registration Nos. 2,895,709 and 3,519,794 be allowed to remain on the register, that the Notice of Opposition be granted and that Applicant's application cited in the Notice of Opposition be refused registration.

This Opposer/Registrant's Answer to Counterclaims to Partially Cancel is being submitted electronically through ESTTA.

Dated: September 16, 2011

Respectfully submitted,

/Lindsay J. Hulley/

Lindsay J. Hulley

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Attorneys for Opposer,

COLOR IMAGE APPAREL, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is the attorney for Opposer Color Image Apparel, Inc., in the above-captioned Opposition proceeding and that on the date which appears below, she caused a copy of the foregoing **OPPOSER/REGISTRANT'S ANSWER TO COUNTERCLAIMS TO PARTIALLY CANCEL** to be served on the following by first class mail service:

Counsel for Applicant:

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Dated: Irvine, California
September 16, 2011

/Lindsay J. Hulley/
Lindsay J. Hulley